S.B. Cr. Bail Application No. 4943/2007
(Yashin Khan & Ors. Vs. State of Rajasthan)

Date of order : 11.10.2007

HON'BLE MR.H.R.PANWAR,J.

Mr. R.K.Charan for the petitioners.
Mr. Ashok Upadhyay, P.P.

Heard learned counsel for the petitioners and public prosecutor for the State. Perused the order impugned and police investigation diary. I have also gone through the statement i.e. dying declaration of the deceased recorded by the Judicial Magistrate, Udaipur on 21.7.2007.

It is contended by learned counsel for the petitioners that on 19.7.2007, deceased Geeta and present petitioners were bound down under Section 107/116 (3) Cr.P.C. The S.H.O. Police Station-Rashmi filed a complaint stating therein that near Ambedkar Colony, Rashmi both the parties were found quarreling each other and were bent upon to cause injuries to each other. They were brought to the police station by the police. On this complaint, the deceased Geeta and present petitioners were bound down. On the next day, it is alleged that deceased Geeta committed suicide. Learned counsel for the

petitioner submits that there is no ingredients of the offences alleged as there is no abetment by the petitioners to the deceased to commit suicide.

Learned public prosecutor opposed the bail application and submits that apart from the offence punishable under Section 306 & 309 IPC, there is offence punishable under Section 3 of the SC/ST (Prevention of Atrocities) Act, 1989 (for short 'the Act' hereinafter) and Section 18 of the Act takes away the power under Section 438 Cr.P.C. Learned public prosecutor further submits that there is statement of deceased recorded by Judicial Magistrate as dying declaration as also the statement of Jaiprakash and Dinesh Chandra who categorically stated against the petitioners and allegation against the petitioners is that they used to harass and torture the deceased to the extent that she was left with no option except to commit suicide and committed the suicide.

I have considered the rival submissions made by the counsel for the parties.

Keeping in view the dying declaration of the deceased, in my view, at this stage, it would not be proper to adjudge as to whether the offence is made out or not, but prima-facie ingredients of the offences alleged are made out and more so, the offence is also punishable under Section 3 of the Act and

Section 18 of the Act takes away the power under Section 438 Cr.P.C. and therefore, the bail application filed by the petitioner under Section 438 Cr.P.C. is dismissed.

(H.R.PANWAR), J.

rp